

STATE OF NEW YORK

4080

2017-2018 Regular Sessions

IN SENATE

February 2, 2017

Introduced by Sens. DeFRANCISCO, AKSHAR, AMEDORE, BOYLE, BRESLIN, FUNKE, GALLIVAN, HAMILTON, HOYLMAN, KAMINSKY, KRUEGER, LANZA, LARKIN, MONTGOMERY, PERKINS, RANZENHOFER, RITCHIE, ROBACH, SANDERS, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to accrual of causes of action for medical, dental and podiatric malpractice

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The opening paragraph of subdivision (g) of section 203 of
2 the civil practice law and rules is designated paragraph 1 and a new
3 paragraph 2 is added to read as follows:

4 2. Notwithstanding any other provision of law to the contrary, for the
5 purposes of sections fifty-e and fifty-i of the general municipal law,
6 section ten of the court of claims act, and the provisions of any other
7 law pertaining to the commencement of an action or special proceeding,
8 or to the filing of a notice of claim as a condition precedent to
9 commencement of an action or special proceeding within a specified time
10 period, the period in which to commence an action or proceeding or to
11 file such notice of claim for medical, dental or podiatric malpractice
12 shall not begin to run until the later of either: (a) when one knows or
13 reasonably should have known of the alleged negligent act or omission
14 and knows or reasonably should have known that such negligent act or
15 omission has caused an injury; or (b) the date of the last treatment
16 where there is continuous treatment for the same illness, injury or
17 condition which gave rise to the accrual of an action. However, such
18 action shall commence no later than seven years from the act, omission
19 or failure complained of or last treatment where there is continuous
20 treatment for the same illness, injury or condition which gave rise to
21 the act, omission or failure; provided, however, that where the action
22 is based upon the discovery of a foreign object in the body of a

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 patient, the action may be commenced within one year of the date of such
2 discovery or of the date of discovery of facts which would reasonably
3 lead to such discovery, whichever is earlier.

4 § 2. Section 214-a of the civil practice law and rules, as amended by
5 chapter 485 of the laws of 1986, is amended to read as follows:

6 § 214-a. Action for medical, dental or podiatric malpractice to be
7 commenced within two years and six months; exceptions. An action for
8 medical, dental or podiatric malpractice must be commenced within two
9 years and six months of the accrual of any such action. The accrual of
10 an action occurs at the later of either (a) when one knows or reasonably
11 should have known of the alleged negligent act or omission and knows or
12 reasonably should have known that such negligent act or omission has
13 caused an injury; or (b) the date of the last treatment where there is
14 continuous treatment for the same illness, injury or condition which
15 gave rise to the accrual of an action. However, such action shall
16 commence no later than seven years from the act, omission or failure
17 complained of or last treatment where there is continuous treatment for
18 the same illness, injury or condition which gave rise to the said act,
19 omission or failure; provided, however, that where the action is based
20 upon the discovery of a foreign object in the body of the patient, the
21 action may be commenced within one year of the date of such discovery or
22 of the date of discovery of facts which would reasonably lead to such
23 discovery, whichever is earlier. For the purpose of this section the
24 term "continuous treatment" shall not include examinations undertaken at
25 the request of the patient for the sole purpose of ascertaining the
26 state of the patient's condition. For the purpose of this section the
27 term "foreign object" shall not include a chemical compound, fixation
28 device or prosthetic aid or device.

29 § 3. Notwithstanding any other provision of law, including sections
30 50-e and 50-i of the general municipal law, section 10 of the court of
31 claims act and the provisions of any general, special or local law or
32 charter requiring as a condition precedent to commencement of an action
33 or special proceeding that a notice of claim be filed or presented,
34 every action for personal injuries or wrongful death stemming from
35 alleged medical malpractice which has been barred during and up to the
36 seven year period prior to the effective date of this act solely because
37 the applicable period of limitations has or had expired before the
38 injured plaintiff or injured claimant or the representative of their
39 estate did not know and reasonably should not have known that they had
40 been injured as a result of medical malpractice is hereby revived and an
41 action thereon may be commenced provided such action is commenced within
42 one year from the effective date of this act.

43 § 4. This act shall take effect immediately.